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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 104 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVANPUR MILK PRODUCERS CO OPMANDLI LTD

Versus

THE NAKHI (KHAPRETA) MILK PRODUCERS MANDALI LTD

Appearance:

1. Special Civil Application No. 104 of 2004

MR VD PARGHI for Petitioner No. 1

UNSERVED-REFUSED (N) for Respondent No. 1

MR SIRAJ GORI, AGP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 28/01/2005

ORAL JUDGEMENT

1. The Bhavanpur Milk Producers Co-opeartive Mandli

Limited, petitioner, has filed this petition with a prayer that this Court may issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, quashing and setting aside the order dated 9th August, 2002, passed by the Deputy Secretary (Appeal), Agriculture & Co-operation Department in Appeal No.20 of 2002.

2. The petitioner contended that the Deputy Secretary (Appeal) has not heard the petitioner. It may be noted that one Mr.G.P.Raval, Deputy Secretary (Appeal), has filed affidavit dated 30th September, 2004, and stated that though petitioner has been served but did not remain present and therefore rules of natural justice has been complied with. The petitioner has filed affidavit-in-rejoinder dated 14th October, 2004, and in para 4 it has been stated as under:

> "I submit that the deponent has not approached this Hon'ble Court with clean hands and has projected a distorted version of the facts as if they had sent the notice in respect of hearing of the revision application filed by the respondent. It is respectfully submitted that the petitioner has filed the petition in respect of village Bhawanpur and the petition is preferred in respect of village Bhawanpur. But the deponent has tried to project that they had sent the notice to Bhawanpura which is situated near Shyamlaji which is situated at a far away distance. This Hon'ble Court may compare the cause title of the petition with the short title of the affidavit in reply as well as the notice purported to have been sent on 10.05.2002 wherein also it is mentioned as Bhawanpura. Thus the deponent has clearly misled this Hon'ble Court as if it had been served upon us without showing any proof in respect of the same."

3. It has been categorically stated that the petitioner Mandli is Bhavanpur whereas through oversight and mistake the Government has served Bhawanpura Mandli and, therefore, in the facts and circumstances of the case and in the eye of law the petitioner was not served.

4. I have heard Mr.V.D.Parghi, learned advocate for the petitioner, and Mr.Gori, learned AGP for the respondent-State. I do not intend to enter into the merits of the matter. However, from the record, I found that the petitioner has not been heard and, therefore, the order passed by the authority is quashed and set

aside only on the ground that the petitioner was not heard. The Additional Secretary (Appeal) will issue fresh notice to the petitioner by Regd. Post A.D. in the name of Bhavanpur Milk Producers Co-operative Mandli Limited (through its Chairman Shri Harjibhai Kababhai Bagora) at Bhavnagar, Post. Nakhi, Taluka Bhiloda, District Sabarkantha. After the petitioner is served, the hearing will be fixed in this behalf and the authority will pass order in accordance with law without being influenced by the order of this Court.

5. With the aforesaid observations and directions, this petition is disposed of. Rule is discharged with no order as to costs.

(K.M. Mehta, J.)

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